3. Ejectment (§ 27*)—Defenses—Equitable Estoppel.—An equitable estoppel cannot be set up as a defense in ejectment.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 114; Dec. Dig. § 27.* 1 Va.-W. Va. Enc. Dig. 153.]

Error to Circuit Court, Henrico County.

Action by R. F. Bialas against Lawrence Casselman and another. Judgment for plaintiff, and defendants appeal. Affirmed.

Sam. A. Anderson and *Alex. H. Sands,* for appellant.
A. B. Dickinson and *Charles Poe,* for appellee.

CABIN BRANCH MINING CO. *v.* HUTCHINSON'S ADM'X.

March 9, 1911.

[70 S. E. 480.]

1. Master and Servant (§ 125*)—Death of Servant—Mining—Notice to Pit Boss.—Where decedent's fellow servant on the afternoon preceding the night on which decedent was killed by a slide from the wall of a mine acquired knowledge of the danger, and on the night of the accident such fellow servant was appointed pit boss and placed in charge of the shift in which decedent was employed, the master was charged with notice of the danger so previously acquired by the pit boss while acting as decedent's fellow servant, under the rule that knowledge acquired by an agent prior to the existence of the agency will be chargeable to the principal, if it is clearly shown that the agent while acting for the principal in a transaction to which the information is material has the information present in his mind.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 251; Dec. Dig. § 125.* 1 Va.-W. Va. Enc. Dig. 276.]

2. Master and Servant (§ 293*)—Death of Servant—Safe Place—Instructions.—An instruction that it was the master's duty. to exercise ordinary care to provide a reasonably safe place in which the injured servant was required to work, and that if the jury believed from the evidence that the place where the servant was required to work was not reasonably safe, and he was ignorant of the fact, and and could not by ordinary care have discovered the danger, it was defendant's duty to inform him, and, in the absence of an official of higher grade, that duty devolved on the mine boss under whom the servant was working, was erroneous, as in effect making the master responsible at all events for the reasonable safety of the place, and also as imposing on the master the duty of informing the servant of the danger, though the master may have had no

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

knowledge of it or means of knowledge in the exercise of ordinary care.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1160; Dec. Dig. § 293.* 9 Va.-W. Va. Enc. Dig. 680.]

3. Master and Servant (§§ 173, 176*)—Negligence—Employment of Incompetent Servants.—A master is not liable for injuries alleged to have resulted from his negligence in employing incompetent servants without proof that the master had knowledge of the incompetency of the servants and that such incompetency was the proximate and efficient cause of the injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 343-346, 351; Dec. Dig. §§ 173, 176.* 9 Va.-W. Va. Enc. Dig. 682.]

4. Trial (§ 203*)—Instructions—Disregarding Faulty Allegations.—The rule that the jury should be instructed to disregard faulty counts in a declaration or those unsupported by evidence obtains, where there is a good count sufficient in itself but which contains matter which is bad but divisible in its nature.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 477-479; Dec. Dig. § 203.* 13 Va.-W. Va. Enc. Dig. 629.]

Appeal from Circuit Court, Prince William County.

Action by Quinton Hutchinson's administratrix against the Cabin Branch Mining Company. Judgment for plaintiff, and defendant appeals. Reversed.

H. T. Davies, Moore, Barbour & Keith, and *S. S. P. Patteson,* for appellant.

Moncure & Tebbs and *C. R. Colvin,* for appellee.

SMITH & MARSH *v.* NORTHERN NECK MUT. FIRE ASS'N OF VIRGINIA.

March 9, 1911.

[70 S. E. 482.]

1. Insurance (§ 610*)—Action on Policy—Time within Which Action Must Be Brought—Statutes—Construction.—Act March 9, 1906 (Acts 1906, c. 112) § 39, providing that no provision in any policy of insurance limiting the time within which a suit or action may be brought to less than one year after loss shall be valid, applies to policies issued before its passage, and is not wholly prospective in its operation.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 610.* 3 Va.-W. Va. Enc. Dig. 221, 224.]

2. Constitutional Law (§ 113*)—Impairing Obligation of Contract.—While a contract is presumed to be made with reference to exist-

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.